THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P. NO.20439 OF 1997

BETWEEN:

M/s.Neelam Jute Private Ltd., Sikakulam, rep. By its Executive Director

… petitioner

Vs.

Industrial Tribunal-cum-Labour Court, Vizag and another

…respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P. NO.20439 OF 1997

ORAL ORDER

The target in this writ petition is the award dated.24-07-

1996 of the Industrial Tribunal-cum-Labour Court, Visakhapatnam in I.D.No.324 of 1989.

The workman (2nd respondent) laid a claim under Sec.2-A(2) of the Industrial Disputes Act,1947(for short "the Act") challenging an order dated.13-07-1989 terminating his services.

The workman asserted that he joined the writ petitioner-management on 17-03-1986 as an Electrician for electrification of the factory such as wiring and fixing of the electrical motors. He also participated in the Union activities and was elected as Vice President of the Workers' Union. He was terminated from service in order to victimize him on trumped up charges. He therefore prayed for invalidation of the termination and for reinstatement with continuity of service and back wages.

The management in the counter-affidavit before the Industrial Tribunal contended that the claim itself is not maintainable as the 2nd respondent herein was not a workman within the meaning of the said expression in Sec.2(s) of the Act. The management claimed that the 2nd respondent was appointed as an Electrical Engineer in charge having supervisory functions. On merits, the management claimed that the 2nd respondent was not discharging his duties properly though the management had warned him several times. The individual had admitted his guilt and assured to work properly in future but failed even thereafter. Due to his inability, inefficiency and carelessness several motors were spoilt, resulting in considerable financial loss to the management. It was also pleaded that a generator was entrusted to the 2nd respondent for rewinding at a workshop in Visakhapatnam and he drew Rs.2000/- from the management for the purpose of paying the workshop but failed to actually pay the amount. In

view of such conduct, the management lost confidence in the petitioner and terminated his services by an order dated.13-07-1989 after tendering Rs.3958/- towards terminal benefits, which the petitioner received. For these reasons the management asserted, the 2nd respondent herein was not entitled to any relief in the Industrial dispute.

Earlier the Industrial Tribunal had found that the petitioner was not a workman and on the aspect whether the management was justified in removing him from service, the Tribunal had recorded that neither of the parties had placed sufficient material to decide this issue and therefore the Tribunal did not give any finding as regards the relief claimed by the 2nd respondent. This was by an order dated.24-04-1992.

The 2nd respondent herein challenged the order of Tribunal dated.24-04-1992 in W.P.No.7903 of 1992. A learned Single Judge of this Court held that the 2nd respondent herein was a workman within the meaning of the Act. The Management went up in Appeal. In W.A.No.1160 of 1993 the Division Bench allowing the Appeal by an order dated.14-12-1993, found fault with the learned single judge determining the issue as to whether the 2nd respondent herein is a workman and held that it was for the Tribunal to determine this aspect. The Division Bench also held that the earlier order of the Tribunal dated.24-04-1982 did not make a rational and judicious assessment of the material on record and therefore directed the Tribunal to deal with the case afresh.

By an order dated.15-06-1994 the Tribunal decided the matter afresh on merits and pursuant to the order of the Division Bench of the High Court referred to supra. Aggrieved by this award. The management then filed W.P.No.16362 of 1994. By

the order dated.21-06-1995 the writ petition was allowed and the award dated.15-06-1994 was set aside. The matter was again remitted to the Industrial Tribunal by the High Court with an observation that the Labour Court failed to consider the material placed by both parties and failed to properly appreciate the earlier order of the Division Bench in W.A.No.1160 of 1993.

The Tribunal has again considered the issue and by an elaborate order passed the impugned award.

On the question of whether the 2nd respondent herein is a workman, the Tribunal held that the petitioner was selected for the post of Electrical Foreman and not as an Electrical Engineer in charge. The mere fact that by an order dated.29-06-1988 of the management (Ex.W-3) the petitioner was placed in full additional charge at the workshop till further orders does not tantamount to the petitioner having been appointed to a post having supervisory functions. The Tribunal also held that the Mill started its production since July-1986 and thereafter the 2nd respondent herein was appointed to do the manual work, of electrical operations. It also referred to the oral testimony of workman concerned (WW.1) that no other workman was under his control and in the year 1989 he had requested the management to provide another workman for assisting him, as he was unable to attend to all the responsibilities single-handed. From the evidence of the workman, the Tribunal observed that the petitioner was appointed to do electrical work mainly by himself and not to supervise the work. Having elaborately considered the oral and documentary evidence, the Tribunal found that the 2nd respondent herein was performing only manual work; had no supervisory responsibilities; had no power of appointment, removal or disciplinary action against any workman; the mere fact that occasionally other functions

were entrusted to him and some of these functions may be having supervisory implications, does not render the substantive office of the petitioner to be supervisory in character.

Analyzing the documentary evidence marshelled on behalf of the management that the 2nd respondent herein had signed the attendance register (Ex.M-3) pertaining to the period 1987-88, in verification of the attendance of other employees, the Tribunal observed that Ex.M-3 discloses that employees of other ranks like Typists, Central Excise Assistants, Account Assistants etc., had also signed this register along with management witnesses 1 and 2 and that the signing of such attendance register does not support the claim of the management that the petitioner belonged to a supervisory category of employees. For similar reasons, the Tribunal rejected the inference suggested by the management (on the basis of the 2nd respondent herein having disbursed the salaries to certain employees), concluding that on a perusal of Exs.M-10 and Ex.M-13, it is apparent that only the petitioner but also K.Ravi Kumar and P.V.Prasad, Central Excise Assistants had disbursed the amounts on occasions. The mere fact that extra responsibility, some of which may have been supervisory in character were entrusted to the 2nd respondent does not take him out from the category of workman, concluded the Industrial Tribunal.

With regard to the contention of the management that the petitioner had a persistent record of negligent performance of duties the Tribunal rightly came to the conclusion that these are not the charges alleged against the petitioner nor were any conclusions on these allegations arrived at after an enquiry. With regard to the allegation that the 2nd respondent drew an

amount of Rs.2000/- from the management for the purpose of getting a generator repaired but failed to pay the amount and therefore his services were terminated, the Industrial Tribunal found no evidence to support this stand of the management. The Tribunal held that the 2nd respondent had produced a receipt of the workshop having received the amount of Rs.2000/- and it would be difficult to believe that a receipt for Rs.2000/- could have been passed without the workshop receiving the amount. In any event held the Tribunal, no enquiry was conducted on this aspect of the matter. From the entirety of the record and the evidence marshalled before it, the Tribunal concluded that the management had concertedly and designedly orchestrated a process for removing the petitioner from service for his union activities. “All these circumstances show that the management made a deliberate attempt to create the ground for removal of the petitioner in order to victimize him for his union activities”, held the Tribunal.

The judgment of the Labour Court is cogent and careful the Tribunal concluded rightly that the termination of the service of 2nd respondent under Ex.W-4 was unjustified and cannot be sustained. However, in the matter of grant of relief, the Tribunal having considered the fact that the adjudication is being done after seven years from the date of removal, considered it appropriate to direct payment of compensation of Rs.1,50,000/- to the 2nd respondent instead of directing his reinstatement into service with continuity and back wages. Consequently the Tribunal passed an award setting aside the termination and directing the management to pay the compensation of Rs.1,50,000/-.

On behalf of the petitioner, the self same grounds as have found disfavour by the Tribunal are asserted i.e., that the 2nd

respondent is not a workman as he was performing supervisory functions as an Electrical Engineer in charge and was drawing salary more than Rs.1600/- per month.

For the elaborate reasons recorded by the Tribunal below, with which this Court is in concurrence and as the conclusions recorded by the Industrial Tribunal are not seen to be perverse, manifestly illegal or grossly irrational, this Court found no justification for interference.

There are no merits in the writ petition. The writ petition is accordingly dismissed but in the circumstances without costs.

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GODA RAGHURAM,J

18TH APRIL 2007
***TSNR**